

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

Crl.Rev.Pet.No. 936 of 2007 ()

ST 2093/2005 of J.M.F.C., CHITTUR

REVISION PETITIONER/COMPLAINANT::

**MANOHARAN, S/O. MADHAVA MANNADIAR,
AGED 41 YEARS, ANCHAM MILE, KUTTIPPALLAM VILLAGE
CHITTUR TALUK, PALAKKAD DIST.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENTS/ACCUSED & STATE::

**1. ABDUL HAKKIM, S/O. K.M.HAMZA,
AGED 29 YEARS, DOOR NO.4/288, CHANTHAPPURA
KUZHALMANNAM VILLAGE, PALAKKAD.**

**2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
20-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

skr

K.HARILAL, J.

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Crl.R.P.No.936 of 2007

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Dated this the 20th day of August, 2015

ORDER

The revision petitioner is the complainant in S.T.C No.2093/2005 on the files of the Judicial First Class Magistrate's Court, Chittur. The above complaint was filed under Section 138 of the N.I.Act against the 1st respondent herein alleging the offence punishable under Section 138 of the N.I.Act. After trial, the learned Magistrate found the revision petitioner guilty of the said offence and convicted thereunder. He was sentenced to pay a fine of ₹1,00,000/- and in default of payment of fine, to undergo simple imprisonment for a period of six months. When the fine amount is realised, a sum of ₹97,000/- shall be paid to the complainant as compensation under Section 357(1)(b) of the Cr.P.C. Though the 1st respondent had preferred Crl.Appeal No.575/2006, the appellate court also confirmed

the conviction and sentence without any interference. This revision petition is filed challenging the sentence imposed in STC No.2093/2005.

2. The learned counsel for the petitioner submits that the sentence imposed on the 1st respondent/accused is disproportionate with the nature and gravity of the offence as well as the statutory mandate under Section 138 of the N.I.Act. It is also submitted that the quantum of fine payable as compensation under Section 357(1)(b) is disproportionate with the cheque amount of ₹2,00,000/-. The quantum of fine fixed by the trial court is per se illegal in view of the statutory mandate that the fine amount may extend to twice the cheque amount.

3. The short question that arises for consideration in this revision is, whether the court below is justified in reducing the quantum of fine amount payable as compensation to the half of the cheque amount ?

4. The case of the complainant is that the accused

borrowed an amount of ₹2,00,000/- from him and in discharge of that liability, the accused drawn and issued cheque for the said amount and the cheque was dishonoured and returned for want of sufficient funds when presented for encashment.

5. Going by Section 138 of the N.I.Act, the statutory mandate is that the accused who is committed the offence punishable under Section 138 of the N.I.Act shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both. But in the instant case, the learned Magistrate reduced the fine to half of the cheque amount contrary to the statutory mandate without recording any reason. In **Anil Kumar v. Shammy** [2002 (3) KLT 852, this Court held that “normally in a prosecution under 138 of the N.I.Act, direction under 357 of the Cr.P.C must follow. If there are sufficient reasons and compelling circumstances to reduce the compensation, the court must

specify such reasons in the judgment and then only choose not to invoke the powers under Section 357(3) of the Cr.P.C.” Therefore, the court must specify the reasons, if the court is compelled to do otherwise than what is stated under the statute.

6. In the above view of the matter, I find that the sentence imposed under the impugned judgment is illegal and unsustainable under law. Consequently, in supersession of the sentence imposed by the trial court and confirmed by the appellate court, the 1st respondent will stand sentenced to pay a fine of ₹2,00,000/- and in default, to undergo simple imprisonment for a period of six months. If the fine amount is realised, the same shall be given to the complainant as compensation under Section 357(1)(b) of the Cr.P.C.

This revision petition is allowed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge